

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING, INC., et al.

Defendants.

Case No. 2:19-CV-00298-BSJ

**DEFENDANTS' MOTION TO EXPEDITE
HEARING ON MOTION TO STAY**

Further to their urgent actions following entry of the Court's Order on March 10, 2023 granting Plaintiff's Motion for Partial Summary Judgment ("March 10 Order" or "Order"), Defendants John C. Heath, P.C., PGX Holdings, Inc., Progrexion Marketing, Inc. Progrexion Teleservices, Inc., CreditRepair.com, Inc., and eFolks, LLC ("Defendants") respectfully move the Court to expedite a hearing of their motion to stay the effect of the Order (Dkt. No. 510).

As detailed in Defendants' Motion to Stay, compliance with the March 10 Order will put Defendants out of business in short order—causing irreparable harm before Defendants are able to seek meaningful review of the Order. In particular, to comply with the Order, Defendants would have to cease monthly billing for the over 80% of credit repair clients who signed up for services over the phone for at least six months—causing them to run out of cash within a few weeks. *See* Dkt. No. 510 at 5–6.

Accordingly, on March 13, the first business day after the Order was issued, Defendants moved this Court to stay its effect (as well as to certify it for interlocutory appeal). Dkt. Nos. 510, 512. The Court originally scheduled a hearing on the Motion to Stay to occur on March 24, 2023, Dkt. No. 514, but subsequently vacated that hearing, Dkt. No. 518. Plaintiff's responses to

the Motion to Stay is due on March 27, 2023, and Defendants intend to file a reply by no later than March 29, 2023 (twelve days before the regular due date of April 10, 2023 under DUCivR 7-1(4)(D)).

Defendants also moved promptly for a stay of the effect of the Order in the Court of Appeals for the Tenth Circuit.¹ *See* App. Mot. (attached as Exhibit A). On March 15, 2023, the Court of Appeals entered a temporary administrative stay “to facilitate the court’s consideration of the motion” and directed the Bureau to file a response. Dkt. No. 515. In that response, filed March 20, 2023, the Bureau argued that the Court of Appeals “lacks appellate jurisdiction” to issue the requested stay pending appeal. CFPB Resp. (attached as Exhibit B) at 1. Defendants are filing their reply brief in the Tenth Circuit today, at which time the matter will be fully briefed and a decision may issue at any moment. If the Court of Appeals agrees with the Bureau, or otherwise declines to grant Defendants’ motion, the Order would take effect, initiating the cascading effects that would ultimately result in Defendants’ demise without the possibility of vindicating their right of appeal.

For these reasons, Defendants respectfully request an expedited hearing during the week of March 27, 2023 on their Motion to Stay (Dkt. No. 510).

Dated: March 23, 2023

Respectfully submitted,

/s/ Edward J. Bennett

Edward J. Bennett*

Edward C. Barnidge*

Suzanne Salgado*

Shauna M. Kramer*

Emma J. Nino*

¹ As explained in their motion to certify two issues for interlocutory appeal, Defendants submit that the March 10 Order is immediately appealable under 28 U.S.C. § 1292(a), but also seek leave under § 1292(b) out of an abundance of caution. *See* Dkt. No. 512 at 1 n.1.

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2023, I caused a true and correct copy of the foregoing to be filed on the CM/ECF system, which will send notification of such filing to all parties and counsel in this case.

/s/ Emma J. Nino
Emma J. Nino